



**4310-MN-P**

**DEPARTMENT OF THE INTERIOR**

Bureau of Reclamation

Remanded Biological Opinions on the Coordinated Long-Term Operation of the Central Valley Project and State Water Project: Notice of Intent to Prepare an Environmental Impact Statement and Notice of Scoping Meetings

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of intent and scoping meetings.

**SUMMARY:** The Bureau of Reclamation intends to prepare an environmental impact statement for modifications to the continued long-term operation of the Central Valley Project, in a coordinated manner with the State Water Project, that are likely to avoid jeopardy and destruction or adverse modification of designated critical habitat. We are seeking suggestions and information on the alternatives and topics to be addressed and any other important issues related to the proposed action.

**DATES:** Submit written comments on the scope of the environmental impact statement by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Four public scoping meetings will be held to solicit public input on alternatives, concerns, and issues to be addressed in the environmental impact statement:

1. Wednesday, April 25, 2012, 6 p.m. to 8 p.m., Madera, CA.
2. Thursday, April 26, 2012, 6 p.m. to 8 p.m., Diamond Bar, CA.
3. Wednesday, May 2, 2012, 2 p.m. to 4 p.m., Sacramento, CA.

4. Thursday, May 3, 2012, 6 p.m. to 8 p.m., Marysville, CA.

**ADDRESSES:** Send written comments to Janice Piñero, Endangered Species

Compliance Act Specialist, Bureau of Reclamation, Bay-Delta Office, 801 I Street, Suite 140, Sacramento, CA 95814-2536; fax to (916) 414-2439; or e-mail at [jpinero@usbr.gov](mailto:jpinero@usbr.gov).

The scoping meetings will be held at the following locations:

1. Madera – Madera County Mail Library, Blanche Galloway Room, 121 N. G Street, Madera, CA 93637.

2. Diamond Bar – South Coast Air Quality Management District, Room CC6, 21865 Copley Dr., Diamond Bar, CA 91765.

3. Sacramento – Federal Building, 650 Capitol Mall, Stanford Room, Sacramento, CA 95814.

4. Yuba County Government Center, Board of Supervisors Chambers, 915 Eighth St., Marysville, CA 95901.

**FOR FURTHER INFORMATION CONTACT:** Janice Piñero at (916) 414-2428; or e-mail at [jpinero@usbr.gov](mailto:jpinero@usbr.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Agencies involved
- II. Why we are taking this action.
- III. Results of litigation.
- IV. Purpose and need for action.
- V. Project area.
- VI. Alternatives to be considered.
- VII. Statutory authority.
- VIII. Request for comments.
- IX. Public disclosure.
- X. How to request reasonable accommodation.

**I. Agencies involved.**

We, the Bureau of Reclamation, are the lead Federal agency. We will invite the following agencies to participate as cooperating agencies for preparation of the environmental impact statement (EIS) in accordance with the National Environmental Policy Act (NEPA), as amended:

- U.S. Fish and Wildlife Service (USFWS),
- National Marine Fisheries Service (NMFS),
- U.S. Army Corps of Engineers; and
- U.S. Environmental Protection Agency (EPA)

We have also identified other Federal, State, and local agencies (e.g., California Department of Water Resources, California Department of Fish and Game, State and Federal Contractors Water Agency, etc.) as potential cooperating agencies, and we will invite them to participate as such in the near future.

## **II. Why we are taking this action.**

The Central Valley Project (CVP) is the largest Federal Reclamation project. We operate the CVP in coordination with the State Water Project (SWP), under the Coordinated Operation Agreement between the Federal government and the State of California (authorized by Public Law 99-546). Reclamation's 2008 Biological Assessment, as modified by general changes due to the passage of time and those items that have been litigated or legislated since the completion of the BA, describes operation of the projects.

In December 2008, USFWS issued a Biological Opinion analyzing the effects of the coordinated long-term operation of the CVP and SWP in California. The USFWS

Biological Opinion:

- Concluded that “the coordinated operation of the CVP and SWP, as proposed, [was] likely to jeopardize the continued existence of the delta smelt” and “adversely modify delta smelt critical habitat.”
- Included a Reasonable and Prudent Alternative for CVP and SWP operations designed to allow the projects to continue operating without causing jeopardy or adverse modification.

On December 15, 2008, we provisionally accepted and then implemented the USFWS Reasonable and Prudent Alternative.

In June 2009, NMFS issued a Biological Opinion analyzing the effects of the coordinated long-term operation of the CVP and SWP on listed salmonids, green sturgeon and southern resident killer whale. This Biological Opinion concluded that the long-term operation of the CVP and SWP, as proposed, was likely to:

- Jeopardize the continued existence of Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook salmon, Central Valley steelhead, southern distinct population segment (DPS) of North American green sturgeon, and southern resident killer whales.
- Destroy or adversely modify critical habitat for Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook salmon, Central Valley steelhead and the Southern DPS of North American green sturgeon.

The NMFS Biological Opinion included a Reasonable and Prudent Alternative

designed to allow the projects to continue operating without causing jeopardy or adverse modification. On June 4, 2009, we provisionally accepted and then implemented the NMFS Reasonable and Prudent Alternative.

Several lawsuits were filed in the United States District Court for the Eastern District of California (the Court) challenging various aspects of the USFWS and NMFS Biological Opinions and our acceptance and implementation of the associated Reasonable and Prudent Alternatives.

### **III. Results of litigation.**

The results of the above lawsuits were as follows.

- On November 16, 2009, the Court ruled that we violated NEPA by failing to conduct a NEPA review of the potential impacts to the human environment before provisionally accepting and implementing the 2008 USFWS Biological Opinion and Reasonable and Prudent Alternative.
- On March 5, 2010, the Court held that we violated NEPA by failing to undertake a NEPA analysis of potential impacts to the human environment before accepting and implementing the Reasonable and Prudent Alternative in the 2009 NMFS Biological Opinion.
- On December 14, 2010, the Court found certain portions of the USFWS Biological Opinion to be arbitrary and capricious, and remanded those portions of the Biological Opinion to USFWS. The Court ordered us to review the Biological Opinion and Reasonable and Prudent Alternative in accordance with NEPA.

- On September 20, 2011, in the Consolidated Salmonid Cases, the Court remanded the NMFS Biological Opinion to NMFS.

We now have an opportunity to initiate a combined NEPA process addressing both the USFWS and NMFS Reasonable and Prudent Alternatives. To that end, we are beginning this combined NEPA process to analyze the effects of modifications to the coordinated long-term operation of the CVP and SWP that are likely to avoid jeopardy to listed species and destruction or adverse modification of designated critical habitat.

#### **IV. Purpose and need for action.**

The purpose of the action is to continue the operations of the CVP, in coordination with the SWP, as described in the 2008 Biological Assessment (as modified) to meet its authorized purposes, in a manner that:

- Is consistent with Federal Reclamation law, applicable statutes, previous agreements and permits, and contractual obligations;
- Avoids jeopardizing the continued existence of federally listed species; and
- Does not result in destruction or adverse modification of designated critical habitat.

Continued operation of the CVP is needed to provide flood control, water supply, fish and wildlife restoration and enhancement, and power generation. It also provides navigation, recreation, and water quality benefits. However, coordinated operation of the CVP, as described in the 2008 Biological Assessment was found to likely jeopardize the continued existence of listed species and adversely modify critical habitat. The ESA

requires Federal agencies to insure that their actions are not likely to jeopardize listed species or result in the destruction or adverse modification of critical habitat.

Modifications to the coordinated operation of the CVP and SWP to be evaluated should be consistent with the intended purpose of the action, within the scope of our legal authority and jurisdiction, economically and technologically feasible, and avoid the likelihood of jeopardizing listed species or resulting in the destruction or adverse modification of critical habitat.

## **V. Project area.**

The project area includes the CVP and SWP Service Areas and facilities, as described in this section.

*A. CVP Facilities.* The CVP facilities include reservoirs on the Trinity, Sacramento, American, Stanislaus, and San Joaquin rivers.

- A portion of the water from Trinity River is stored and re-regulated in Clair Engle Lake, Lewiston Lake, and Whiskeytown Reservoir, and diverted through a system of tunnels and powerplants into the Sacramento River. Water is also stored and re-regulated in Shasta and Folsom reservoirs. Water from these reservoirs and other reservoirs owned and/or operated by the SWP flows into the Sacramento River.
- The Sacramento River carries water to the Sacramento-San Joaquin Delta (Delta). The Jones Pumping Plant at the southern end of the Delta lifts the water into the Delta Mendota Canal (DMC). This canal delivers water to CVP contractors, who divert water directly from the DMC, and exchange

contractors on the San Joaquin River, who divert directly from the San Joaquin River and the Mendota Pool. CVP water is also conveyed to the San Luis Reservoir for deliveries to CVP contractors through the San Luis Canal. Water from the San Luis Reservoir is also conveyed through the Pacheco Tunnel to CVP contractors in Santa Clara and San Benito counties.

- The CVP provides water from Millerton Reservoir on the San Joaquin River to CVP contractors located near the Madera and Friant-Kern canals. Water is stored in the New Melones Reservoir for water rights holders in the Stanislaus River watershed and CVP contractors in the northern San Joaquin Valley.

*B. State Water Project Facilities.* The Department of Water Resources operates and maintains the SWP, which delivers water to agricultural and municipal and industrial (M&I) contractors in northern California, the San Joaquin Valley, the Bay Area, the Central Coast, and southern California.

- SWP water is stored and re-regulated in Lake Oroville and released into the Feather River, which flows into the Sacramento River.
- SWP water flows in the Sacramento River to the Delta and is exported from the Delta at the Banks Pumping Plant. The Banks Pumping Plant lifts the water into the California Aqueduct, which delivers water to the SWP contractors and conveys water to the San Luis Reservoir.
- The SWP also delivers water to the Cross-Valley Canal, when the systems



have capacity, for CVP water service contractors.

## **VI. Alternatives to be considered.**

The proposed action for the purposes of NEPA will consider operational components of the 2008 USFWS and the 2009 NMFS Reasonable and Prudent Alternatives. These components address continued operation of the CVP, in coordination with the SWP, in a manner intended to avoid jeopardizing continued existence of federally listed species or result in the destruction or adverse modification of designated critical habitat.

- We expect to analyze flow management actions resulting from the 2008 USFWS Reasonable and Prudent Alternative that affect:

- (1) Protection of adult, juvenile, and larval delta smelt; and
- (2) Habitat improvements for delta smelt growth and rearing.

- We expect to analyze flow management actions resulting from the 2009 NMFS Reasonable and Prudent Alternative that affect:

- (1) Attraction and channel maintenance flows;
- (2) Reduction of thermal stress;
- (3) Passage of fish at Red Bluff Diversion Dam;
- (4) Reduction of redd dewatering, entrainment, and straying; and
- (5) Reduction of negative hatchery influences on natural populations.

The proposed action will not consider:

- Structural changes prescribed in the NMFS 2009 Reasonable and Prudent

Alternative that would require future evaluations, environmental documentation, and permitting; and

- Reasonable and Prudent Alternative actions that would require future studies.

As required by NEPA, we will develop and consider a proposed action and a reasonable range of alternatives, including a No Action Alternative. Reasonable alternatives to the proposed action may include physical changes or changes in operations of CVP facilities.

Alternatives could affect all or various components of the CVP, and may also include actions that affect SWP operations. We will engage with the Department of Water Resources in developing the proposed action and alternatives. We will also consider including in the alternative analysis reasonable alternatives to the proposed action identified through the scoping process.

## **VII. Statutory authority.**

NEPA [42 U.S.C. 4321 *et seq.*] requires that Federal agencies conduct an environmental analysis of their proposed actions to determine if the actions may significantly affect the human environment. In addition, as required by NEPA, Reclamation will analyze in the EIS the potential direct, indirect, and cumulative environmental effects that may result from the implementation of the proposed action and alternatives, which may include, but are not limited to, the following areas of potential impact:

- a. Water resources, including groundwater;

- b. Land use, including agriculture;
- c. Socioeconomics;
- d. Environmental justice;
- e. Biological resources, including fish, wildlife, and plant species;
- f. Cultural resources;
- g. Water quality;
- h. Air quality;
- i. Soils, geology, and mineral resources;
- j. Visual, scenic, or aesthetic resources;
- k. Global climate change;
- l. Indian trust assets
- m. Transportation; and
- n. Recreation.

## **VII. Request for comments.**

The purposes of this notice are:

- To advise other agencies, CVP and SWP water and power contractors, affected tribes, and the public of our intention to gather information to support the preparation of an EIS;
- To obtain suggestions and information from other agencies, interested parties, and the public on the scope of alternatives and issues to be addressed in the EIS; , and
- To identify important issues raised by the public related to the

development and implementation of the proposed action.

We invite written comments from interested parties to ensure that the full range of alternatives and issues related to the development of the proposed action are identified. Comments during this stage of the scoping process will only be accepted in written form. Written comments may be submitted by mail, electronic mail, facsimile transmission or in person (see Addresses). Comments and participation in the scoping process are encouraged.

#### **IX. Public disclosure.**

Before including your name, address, phone number, email address or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

#### **X. How to request reasonable accommodation.**

If special assistance is required at one of the scoping meetings, please contact Janice Piñero at the information provided above <mailto:> or TDD 916-978-5608, at least five

working days before the meetings. Information regarding this proposed action is available in alternative formats upon request.

Dated: March 14, 2012

Signed: /s/ Anastasia L. Leigh  
Anastasia T. Leigh  
Regional Environmental Officer  
Mid-Pacific Region

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